

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 10-8840-VBF (AGRx)**

Dated: **May 4, 2011**

Title: Preston Smith -v- City of Burbank, et al.

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Joseph Remigio
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): COURT ORDER RE: (1) DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES (DKT. #24); (2) PLAINTIFF'S APPLICATION FOR AN ORDER DEFERRING OR CONTINUING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MOTION FOR JUDGMENT ON THE PLEADINGS (DKT. #25)

I. Defendants City of Burbank, Burbank Police Department and Burbank Police Officers Baumgarten and Edwards' Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues (dkt. #24)

The Court has received, read and considered Defendants City of Burbank, Burbank Police Department and Burbank Police Officers Baumgarten and Edwards' Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues (dkt. #24).

The Court **DENIES**, without prejudice, the Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues (dkt. #24). In granting the parties' Stipulation for an Order Staying the Case (dkt. #19), the Court permitted Defendants to file motions for judgment

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on the pleadings pursuant to Fed. R. Civ. P. 12(c) (dkt. #20). However, the Court did not allow Defendants to file motions for summary judgment pursuant to Fed. R. Civ. P. 56, such as the Motion for Summary Judgment filed by Defendants.

Accordingly, the Court denies Defendants' Motion for Summary Judgment (dkt. #24) as premature.

II. Plaintiff Preston Smith's Application for an Order Deferring or Continuing Defendants' Motion for Summary Judgment and Motion for Judgment on the Pleadings (dkt. #25)

The Court has also received, read and considered Plaintiff Preston Smith's Application for an Order Deferring or Continuing Defendants' Motion for Summary Judgment and Motion for Judgment on the Pleadings (dkt. #25). As of May 4, 2011, no opposing papers have been received.

In light of the above ruling, Plaintiff's request to defer or continue Defendants City of Burbank, Burbank Police Department and Burbank Police Officers Adam and Edwards' Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues (dkt. #24) is moot.

The Court **DENIES** Plaintiff's request to defer or continue Defendant Burbank Police Officer Gunn's Motion for Judgment on the Pleadings (dkt. #21). Judgment on the pleadings depends on the sufficiency of the complaint, not on the underlying evidence. See *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). Here, the question of whether Plaintiff's pleading is sufficient is independent from the question of what new evidence he might discover. Therefore, it appears that the Court can rule on Defendant Gunn's Motion for Judgment on the Pleadings without unfairness to Plaintiff.

IT IS SO ORDERED.